



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, Ca. 94105**

JUL 29 2015

**CERTIFIED MAIL NO. 7001 0320 0002 0254 4615
RETURN RECEIPT REQUESTED**

**IN REPLY: ENF-2-1
REFER TO: Docket No. R9-15-04**

Marco Gomez
President & CEO
Drake Cement LLC
5745 N. Scottsdale Rd., Suite B-135
Scottsdale, Arizona 85250

Re: Drake Cement LLC Notice of Violation

Dear Mr. Gomez:

Enclosed is a Notice and Finding of Violation ("NOV") issued pursuant to section 113(a)(1) and 113(a)(3) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that Drake Cement LLC ("Drake") has violated certain sections of the Act's National Emission Standards for Hazardous Air Pollutants, the Arizona State Implementation Plan and Title V Operating Permit Program, at its portland cement plant located near Paulden, Arizona (the "Facility").

You should be aware that section 113(a)(3) of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Facility being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford Drake an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Charles Aldred of the Air & TRI Section at (415) 972-3986, or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3914.

Thank you for your cooperation in this matter.

Sincerely,



Kathleen H. Johnson
Director, Enforcement Division

Enclosure

cc: Mr. Eric Massey, Air Quality Division Director, ADEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

IN REPLY: ENF-2-1
REFER TO: Docket No. R9-15-04

Mr. Eric Massey
Air Quality Division Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Dear Mr. Massey: *Eric*

Enclosed for your information is a copy of a Notice and Finding of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to Drake Cement LLC ("Drake") for violations of the Clean Air Act ("Act") at Drake's portland cement plant located near Paulden, Arizona (the "Facility").

The purpose of the NOV is to notify Drake that EPA finds that it has violated certain sections of the Act's National Emission Standards for Hazardous Air Pollutants, the Arizona State Implementation Plan and Title V Operating Permit Program at the Facility. The violations are set forth more specifically in the enclosed NOV. The NOV has been issued pursuant to section 113(a)(1) and 113(a)(3) of the Act, 42 U.S.C. §§ 7401-7671q.

If you have any questions concerning this NOV, please contact Charles Aldred of the Region 9 Air & TRI Section at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson
Director, Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of)	Docket No. R9-15-04
)	
Drake Cement LLC)	
)	NOTICE AND FINDING OF VIOLATION
Paulden, Arizona)	
)	
Proceeding Under Section)	
113(a) of the Clean Air Act,)	
42 U.S.C. § 9613(a))	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation ("NOV") is issued to Drake Cement LLC ("Drake") for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its portland cement plant located near Paulden, Arizona (the "Drake Cement Plant" or the "Facility"). The Facility is located in Yavapai County. Drake violated the National Emission Standards for Hazardous Air Pollutants ("NESHAP") General Provisions and the NESHAP for the Portland Cement Manufacturing Industry. Drake also violated certain conditions contained in the Arizona State Implementation Plan and the Facility's Title V Operating Permit.

STATUTORY & REGULATORY BACKGROUND

National Emission Standards for Hazardous Air Pollutants

1. Pursuant to section 112 of the Act, the Administrator of the EPA promulgated the following NESHAP standards: 40 C.F.R. Part 63, Subpart A -- General Provisions (Subpart A), 59 Fed. Reg. 12,430 (Mar. 16, 1994), as amended (40 C.F.R. §§ 63.1 through 63.15), and

Subpart LLL -- National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry (Subpart LLL), 64 Fed. Reg. 31925, June 14, 1999, as amended at 67 Fed. Reg. 16619, Apr. 5, 2002; and 67 Fed. Reg. 72584, Dec. 6, 2002 (40 C.F.R. §§ 63.1340 through 60.1359).

2. The Subpart A applicability requirements provide, in pertinent part, that the NESHAP standards "regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants ("HAPs") listed in this part pursuant to section 112 (b) of the Act." 40 C.F.R. § 63.1.

3. Subpart LLL applies to each new and existing portland cement plant which is a major source or an area source of HAPs. 40 C.F.R. § 63.1340(a).

4. Subpart LLL defines "portland cement plant" as "any facility manufacturing portland cement." 40 C.F.R. § 63.1341.

5. Subpart A defines a "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any [HAP] or 25 tons per year or more of any combination of [HAPs]." 42 U.S.C. § 7412(a)(1); 40 C.F.R. § 63.2.

6. The Subpart LLL compliance date for the Subpart LLL rule requirements that became effective on or before December 20, 2006 is the date of startup for sources that commenced construction after

December 20, 2006. 40 C.F.R. § 63.1351(b).

7. Subpart LLL includes limits for new or existing cement kilns as affected sources at major or area sources for the following pollutants:

- a. Particulate Matter (PM);
- b. Dioxins/Furans (D/F);
- c. Mercury;
- d. Total Hydrocarbons (THC); and
- e. Hydrochloric acid (HCl).

40 C.F.R. § 63.1343(b)(1)

8. Subpart A includes requirements for notification and reporting. 40 C.F.R. §§ 63.9 and 63.10.

9. Subpart LLL also includes requirements for notification and reporting. 40 C.F.R. §§ 63.1353 and 63.1354.

10. Subpart A requires that, "[a]fter a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any reports at its discretion." 40 C.F.R. §

63.10(a)(4)(ii).

11. Subparts A and LLL were delegated to the Arizona Department of Environmental Quality (ADEQ) on July 17, 1998 and November 16, 2001, respectively. See 63 Fed. Reg. 38478; 66 Fed. Reg. 57668.

12. The Subpart A recordkeeping and reporting requirements provide, in pertinent part, that "the owner or operator of an affected source required to install a Continuous Monitoring System [CMS] by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually." 40 C.F.R. § 63.10(e)(3).

13. Subpart A defines a CMS as "a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation." 40 C.F.R. § 63.2.

14. Subpart LLL require that owners or operators of an affected source subject to the D/F Emissions Standards must monitor and maintain records of the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to, or upstream of, the kiln, in-line kiln/raw mill and/or alkali bypass PM control devices. 40 C.F.R. § 63.1350(g)(1). The monitoring of temperature is considered a continuous parameter monitoring system, and thus a CMS pursuant to 40 C.F.R. §

63.10(e)(3).

15. The Subpart LLL reporting requirements include a summary report to be submitted semiannually which contains the information specified in §63.10(e)(3)(vi). The summary report shall also include all exceedences of maximum control device inlet gas temperature limits specified in §63.1344(a) and (b), among other information. See 40 C.F.R. §§ 63.1354(b)(9)(i).

16. Subpart LLL requires performance tests at regular intervals for affected sources that are subject to a dioxin, organic HAP or HCl emissions limit and must be repeated every 30 months except for pollutants where that specific pollutant is monitored using CEMS. Tests for PM are repeated every 12 months. 40 C.F.R. § 63.1349(c).

17. Subpart LLL also requires that, "[a]s of December 31, 2011 and within 60 days after the date of completing each performance evaluation or test, as defined in § 63.2, performance evaluation or tests conducted to demonstrate compliance with any standard covered by this subpart must be submitted to the EPA electronically to the EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT). . . ." 40 C.F.R. § 63.1349(d)(2).

18. Subpart LLL includes an opacity limit for each existing or new raw or finish mill at a major source of 10%. 40 C.F.R. 63.1343(b)(1).

National Ambient Air Quality Standards

19. The Administrator of EPA, pursuant to authority under

Section 109 of the Act, 42 U.S.C. § 7409, has promulgated National Ambient Air Quality Standards (NAAQS) for certain criteria pollutants relevant to this NOV, including NO_x, CO, SO₂ and Ozone. See 40 C.F.R. §§ 50.4, 50.5, 50.8, 50.9, 50.10, and 50.11. NO_x serves as the regulated pollutant for the NO₂ standard and one of the regulated pollutants for the O₃ standard.

20. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (AQCR) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the Arizona AQCRs are listed at 40 C.F.R. § 81.303.

21. The Facility is located in an area that has been designated as Unclassifiable/Attainment for all of the NAAQS during all times relevant to this NOV. 40 C.F.R. § 81.303.

Prevention of Significant Deterioration

22. Section 110, 42 U.S.C. § 7410, of the Act requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance and enforcement of the primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable state implementation plan (SIP).

23. Section 110(a)(2)(C) of the Act requires that each SIP include a PSD permit program as provided for in Part C of Title I of the Act (Part C). Part C sets forth requirements for SIPs for

attainment areas to ensure maintenance of the NAAQS. Under Part C, PSD permitting requirements apply to all new or modified major stationary sources that emit significant amounts of regulated pollutants that are unclassified or meeting NAAQS in any particular AQCR.

24. The PSD program generally require that an owner or operator of a major stationary source obtain the requisite PSD permit prior to commencing construction for each pollutants emitted in significant amounts that includes emission rates consistent with best available control technology (BACT) to control emissions, See 40 C.F.R. § 52.21(j), among other requirements. Section 165(a) of the Act; 42 U.S.C. § 7475(a).

State Implementation Plan

25. EPA Region 9 approved Section R9-3-301 and R9-3-304 of the Arizona Administrative Code (A.A.C.), titled Installation Permits: General and Installation Permits in Attainment Areas into the Arizona SIP on May 3, 1983. 48 Fed. Reg. 19879.

26. R9-3-301(A) requires that no person may commence construction of a new major source without first obtaining an Installation Permit from the Director of ADEQ, which serves as the preconstruction PSD permit.

27. R9-3-304(A) requires that each new major source required to obtain an Installation Permit shall apply BACT for each pollutant that has the potential to emit in significant amounts.

Title V Operating Permit Program

28. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources". See Section 502(a) of the Act, 42 U.S.C. § 7661a(a). Regulations implementing the Title V permit program are set forth at 40 C.F.R. Part 70.

29. Pursuant to Title V, it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

30. Under Section 502(d)(1) of the Act, states were required to develop and obtain approval to administer Title V programs. 42 U.S.C. § 7661a(d)(1). EPA granted full approval of ADEQ's Title V Operating Permit Program, contained in A.A.C Title 18 Chapter 2, Articles 1, 3, and 5, on November 30, 2001. 40 C.F.R. Part 70, Appendix A.

31. Sources subject to Title V and falling under ADEQ jurisdiction must obtain a Title V permit that: 1) contains such conditions necessary to assure compliance with the applicable requirements; 2) identifies all applicable requirements the source is subject to; and 3) certifies compliance with all applicable requirements, and where a source is not meeting requirements, contains a plan for coming into compliance. Sections 503 and 504 of the Act, 42 U.S.C. §§ 7661b and 7661c(a); 40 C.F.R. §§ 70.1, 70.5 and 70.6;

A.A.C. R18-2-304(J) and R18-2-306.

32. ADEQ operates a permitting program where it issues one permit that serves as both a Title V operating permit and a PSD permit.

FINDINGS OF FACT

Facility Background

33. Drake is the owner and operator of the Facility.

34. The Facility is a "Portland Cement Plant" as that term is defined in 40 C.F.R. § 63.1459.

35. The Facility is a major source of HAPs, and thus subject to the applicable requirements of Subpart LLL and the related provisions of Subpart A.

36. The Facility is also a major source of NO_x, CO, HCl and total HAPs pursuant to the SIP-approved PSD and Title V programs, therefore was subject to PSD and Title V permitting.

NESHAP General Provisions and Portland Cement Manufacturing NESHAP

37. The date of startup of the kiln at the Facility, which is the affected source for Subpart LLL purposes, was June 15, 2011.

38. Drake for the first time submitted monitoring or performance test reports required by Subparts A and/or LLL to EPA, either to the CDX or in paper format, on July 20, 2015. These reports have been required to be submitted to EPA since the startup of the Facility.

39. Drake did not monitor and maintain records of the

temperature of the exhaust gases from the kiln at the inlet to the PM control device from startup of the kiln until at least February 19, 2013.

40. Opacity at the outlet of the raw mill at the Facility was recorded at greater than 10% for 54 minutes from September 10-23, 2014.

PSD and Title V Permits Program

41. ADEQ initially issued a Class I Title V Permit No. 1001770 (the "Permit") on December 28, 2005 to Drake for construction and operation of the Facility.

42. The Permit is both a preconstruction PSD permit issued pursuant to the Arizona SIP and a Title V operating permit.

43. The Permit includes certain conditions that require:

- a. Cement clinker produced in the Rotary Kiln shall not exceed 83.33 tons per hour based on an hourly 3-hour average.
- b. The Permittee shall not cause or allow to be emitted into the atmosphere from the Main Stack any gases which contain NO_x in excess of 95 lbs/hr based on an hourly rolling 24-hour average.
- c. The Permittee shall not cause or allow to be emitted into the atmosphere from the Main Stack any gases which contain PM₁₀ in excess of 5.967 lbs/hr.
- d. The Permittee shall not cause or allow to be emitted into the atmosphere from any Dust Collector (Dust Collector DC-

12.7.2 controls emissions from the Coal Mill baghouse to the pneumatic coal conveying system) gases which contain PM in excess of the following emission rates, based on a 3-hour average.

Emission Point ID Number	PM Emission Limit (lbs/hr)
DC-12.7.2	0.018

- e. The Permittee shall continuously monitor and record the pressure drop across Baghouses BH-5.30 and BH-10.13 (these baghouses control emissions from the main stack and the clinker cooler stack at the Facility). The output of the pressure drop continuous parameter monitoring systems shall be recorded on circular charts or other permanent format and shall be maintained on site readily available for inspection.

44. Drake produced clinker greater than 83.33 tons per hour on a rolling 3-hour average during the periods in 2012 listed in Attachment A.

45. Drake emitted NO_x at greater than 95 lbs/hr on a rolling 24-hour average from the Main Stack during the periods in 2012 listed in Attachment B.

46. Drake completed a performance test on the main stack at the Facility on May 9, 2013, showing emissions of 9.602 lbs PM₁₀/hr.

47. Drake completed a performance test on Emissions Point DC-12.7.2 at the Facility on February 14-22, 2012, showing emissions of

0.04 lbs PM10/hr.

48. Drake failed to record pressure drop across Baghouses BH-5.30 and BH-10.13 at the Facility during the periods listed in Attachment C.

FINDING OF VIOLATION

NESHAP General Provisions and Portland Cement Manufacturing NESHAP

49. Drake failed and continues to fail to comply with certain notification and reporting requirements of Subparts A and LLL, including submitting reports to EPA since the startup of the Facility.

50. Drake recorded opacity from the raw mill greater than 10%, the Subpart LLL limit, for 54 minutes from September 22-24, 2014.

51. Drake failed to monitor and maintain records of the temperature of the exhaust gases from the kiln at the inlet to the PM control device from startup of the kiln until at least February 19, 2013.

NOTICE OF VIOLATION

PSD and Title V Permits Programs

52. Drake failed to meet conditions of its Permit in the following ways:

- a. Exceeding the clinker production limit of 83.33 tons per hour based on an hourly 3-hour average cement clinker production rate during the periods identified in Attachment A;
- b. Exceeding the NO_x limit of 95 lbs/hr based on an hourly

- rolling 24-hour average from the Main Stack during the periods identified in Attachment B;
- c. Exceeding the PM₁₀ emission limit of 5.967 lbs/hr from the Main Stack on May 9, 2013, as measured through a performance test showing emissions of 9.602 lbs PM₁₀/hr;
 - d. Exceeding the PM emission limit of 0.018 lbs/hr based on a 3-hour average from Dust Collector DC-12.7.2 on February 14-22, 2012, as measured through a performance test showing emissions of 0.04 lbs PM₁₀/hr; and
 - e. Failing to continuously monitor and record the pressure drop across Baghouses BH-5.30 and BH-10.13 during the periods identified in Attachment C.

ENFORCEMENT

53. For any violation of a SIP, such as for PSD permit violations contained in this NOV, above, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

54. For non-SIP violations, Section 113(a)(3) of the Act, 42

U.S.C. § 7413(a)(3), provides that the Administrator may, without regard to the period of violation, issue an administrative penalty order, issue an order requiring compliance with the requirements of the Act, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(3); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

55. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought 30 days after the date of issuance of a Notice of Violation.

56. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Drake Cement Plant being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

57. Section 113(e)(1) of the Act, 42 U.S.C. § 9613(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of

the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

58. Section 113(e)(2) of the Act, 42 U.S.C. § 9613(e)(2), allows the Administrator or the court to assess a penalty for each day of violation.

OPPORTUNITY FOR CONFERENCE

59. Drake may confer with EPA regarding this NOV if it so requests. A conference would enable Drake to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If Drake seeks such a conference, it may choose to be represented by counsel. If Drake wishes to confer with EPA, it must make a request for a conference within 10 working days of receipt of this NOV. Any request for a conference or other inquiries concerning the NOV should be made in writing to:

Ivan Lieben, Office of Regional Counsel
U.S. EPA (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3914

Dated:

July 27, 2015 Kathleen H. Johnson
Kathleen H. Johnson
Director, Enforcement Division

Attachment A

Periods of time when Cement clinker produced in the Rotary Kiln exceeded 83.33 tons per hour based on an hourly 3-hour average period.

5/22/12 2 periods;
5/25/12 12 periods;
5/28/12 17 periods;
5/29/12 1 periods;
7/20/12 1 periods;
7/23/12 3 periods;
7/24/12 22 periods;
7/25/12 24 periods;
7/26/12 21 periods;
7/27/12 24 periods;
7/28/12 7 periods.

Attachment B

Periods of time when NO_x gases from the Main Stack exceeded 95 lbs/hr based on an hourly rolling 24-hour average period.

12:00 3/12/12 through 13:00 3/13/12;
03:00 3/31/12 through 11:00 3/31/12;
05:00 9/19/12 through 13:00 9/19/12;
07:00 4/3/12 through 18:00 4/3/12;
5/24/12 23 periods;
7/11/12 2 periods;
7/19/12 20 periods;
12/20/12 2 periods.

Attachment C

Periods of time when pressure drop across Baghouses BH-5.30 and BH-10.13 was not continuously monitored and recorded.

00:00 11/17/12 through 12:48 2/12/13.